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Supreme Court, U. S.
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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1980

No.————

COSKUN R. ATESER and BEVERLY ATESER, his wife,
Petitioners,

vs.

PUBLIC HOSPITAL DISTRICT NUMBER ONE d/b/a VALLEY GENERAL HOSPITAL, CHARLES P. CURRAN, E. R. COLEMAN
Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth District

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QUESTION PRESENTED

Whether it is a deprivation of procedural due process where it is shown that after a prior hearing, which resulted in restrictions on his privileges to practice medicine in the public hospital, petitioner was thereafter charged with violating said restrictions and his total hospital privileges were, as a result, summarily suspended (no hearing being allowed to review this action in violation of the bylaws of the hospital).

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The petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth District entered in this proceeding on May 1, 1980.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on May 1, 1980. The subsequent order denying a rehearing was issued June 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether it is a deprivation of procedural due process where it is shown that after a prior hearing, which resulted in restrictions on his privileges to practice medicine in the public hospital, petitioner was thereafter charged with violating said restrictions and his total hospital privileges were, as a result, summarily suspended (no hearing being allowed to review this action in violation of the bylaws of the hospital).

CONSTITUTIONAL PROVISION STATUTE AND REGULATION

Fourteenth Amendment, U.S. Constitution

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983 Civil Section for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulations, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Subsection 17, Section 5, Article III, Bylaws, Rules and Regulations of the Medical Staff, Valley General Hospital

If it shall become apparent to the Executive Committee that a staff member may have acted in breach of the Staff's Bylaws, Rules and Regulations, and that an emergency exists requiring immediate action, the Executive Committee shall be empowered to temporarily revoke or reduce a staff member's privileges provided the Committee shall immediately advise the Board of Commissioners in writing of the action taken and the reasons therefor. Further, upon taking such action the Executive Committee shall request the Credentials Committee to conduct an investigation of the matter, and the Credentials Committee shall thereafter, as soon as possible, report to the Executive Committee with their recommendation. A copy of said report and recommendation shall be sent to the physician or dentist involved, either by registered or certified mail. If the physician or dentist involved takes exception to the recommendation of the Credentials Committee, then he shall be entitled to a review of the matter and hearings pursuant to the terms, conditions and procedure set forth in foregoing Subsections 3 through 16 of this Section.

STATEMENT OF THE CASE

This is a lawsuit by a foreign-born doctor who was deprived of procedural due process when he was summarily suspended from his public hospital without being afforded a hearing or any other opportunity to be heard.

The respondents reviewed petitioner's medical ability and convened the Hospital Judicial Committee to review petitioner's actions. The Committee subsequently recommended that petitioner no longer have obstetrical privileges and that his general medicine privileges be continued only on the condition that he obtain consultation on any patient admitted by him to the hospital for more than 24 hours. After obtaining the medical staff concurrence, these recommendations were adopted by the Board of Commissioners. The recommendations became effective and were conveyed to petitioner on October 20, 1972. On October 31, 1972, and November 17, 1972, petitioner received letters from the Chief of Staff (Dr. Bardarson) informing petitioner that he had allegedly violated the foresaid restrictions. Then, on November 30, 1972, petitioner again received a letter from the Chief of Staff incorporating a third alleged violation of the restrictions and informing him that, because of his "flagrant" violations, the Executive Committee had declared an emergency to exist and that his admitting privileges were revoked.

The matter was then referred to the Credentials Committee who purportedly held a special meeting and reviewed the three letters from the Chief of Staff to petitioner. This Committee then concurred with the Executive Committee. These recommendations

were adopted by the Board of Commissioners on December 21, 1972.

Subsection 17, Section 5, Article III, Bylaws, Rules and Regulations, of the hospital provides that a copy of the report of the Credentials Committee be furnished to petitioner. No such procedure was ever followed nor was petitioner allowed to appear at the meeting of the Executive Committee or the credentials Committee where his fate was ultimately determined.

The Federal District Court for the Western District of Washington subsequently heard the matter per 28 U.S.C. §1343. Both the federal statute and the U.S. Constitution raised a federal question.

REASONS FOR GRANTING THE WRIT

The approval by the Court below of the respondents' summary dismissal of the petitioner from his hospital makes a travesty of the plain meaning of 42 U.S.C. §1983. The suspension of Dr. Ateser without affording him any opportunity to be heard and the refusal of the Hospital Judicial Committee to allow petitioner to submit information vital to his interests prior to terminating his hospital privileges is clearly a deprivation of his §1983 protected rights and did not afford him procedural due process. As more particularly set out in the statement of the case, after the restrictions of October 20, 1972 were imposed, petitioner was alleged to have "flagrantly" violated the same on at least three occasions. Further, as a result of these violations, petitioner ultimately had his entire hospital privileges revoked.

Initially, the question becomes whether peti-

tioner was afforded the minimum of procedural due process that is required by the United States Constitution. While the concept of due process does not necessarily require a trial-type hearing in every conceivable case of government impairment of a private interest, *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, it does require at least an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the rights of the party involved. *Link v. Wabash R. Co.*, 370 U.S. 626.

The Constitution does not prevent a Hospital from establishing standards for admission to or retention of hospital privileges but, where it is acting as a subdivision of the State (as in this case), it is required to meet the provisions of the Fourteenth Amendment in dealing with physicians admitted. *Meredith v. Allen County War Memorial Hospital Comm.*, 397 F.2d 33 (6th Circ. 1968).

It is submitted that in this case petitioner was entitled to notice and an opportunity to be heard before an impartial tribunal. The court is referred to a strikingly similar set of circumstances that were considered in *Woodbury v. McKinnon*, 447 F.2d 839 (5th Circ. 1971). That case recognizes the necessity of procedural due process where a physician's hospital privileges are to be curtailed. In that particular instance, the Court held that where the doctor involved was given a hearing with an opportunity to present his side, and had been fairly apprised of the nature of the charges against him, procedural due process was met.

Petitioner has been denied all the foregoing procedural prerequisites. First, the only correspon-

dence he received indicated there were alleged violations of his restricted privileges. Then, on November 30, 1972, he was informed by a third letter that an emergency had been declared and his privileges were suspended. No opportunity for him to appear, let alone explain the facts and circumstances justifying his actions; it was just a summary revocation. The letter of November 30, 1972, did not even indicate that it was a temporary revocation, only that his privileges had been revoked.

Pursuant to Subsection 17, Section 5, Article III of the Bylaws, Rules and Regulations of the Medical Staff, the matter was then transferred to the Credentials Committee for investigation and their report. The report of the Credentials Committee does not indicate that any investigation was done; rather, in reliance upon the three alleged violations, this Committee recommended permanent suspension.

Finally, the above-cited bylaw section requires a copy of the Credentials Committee report be sent to the physician involved. This was not done. Respondents contend that compliance with this "procedural nicety" was not necessary under the circumstances. It is submitted that this attitude is precisely the issue, and that, in fact, no "procedural niceties" were allowed to petitioner from the date of the November 30, 1972 letter through the affirmance by the Board of Commissioners on December 21, 1972. Surely procedural due process requires more than this!

The failure of the respondent hospital's Credentials Committee to investigate the veracity of the

allegations presented against the petitioner as required by their bylaws *plus* the failure to send a copy of the Credentials Committee report to the petitioner as required by their bylaws is not only a violation of procedural due process but is, in addition, a violation of the precept set forth in *Arizona Grocery Co. v. Atchison, Topeka, and Santa Fe Ry.*, 284 U.S. 370 (1932), that an administrative agency must follow its own rules. As the opinion of the Court below shows, there is no issue as to the foregoing facts.

The Circuit Court of Appeals denied petitioner's claim on the grounds that either previous procedural safeguards provided by respondents had been sufficient, that any procedural omission was offset by petitioner's alleged failure to exercise his procedural rights, and that petitioner's subsequent admission of the facts, which supposedly would have been the subject of any additional review, made any additional hearing unnecessary.

The preliminary proceedings regarding the conduct of Dr. Ateser are not at issue here. However, the subsequent denial of procedural due process is related to a completely different set of facts and circumstances. Petitioner simply wants a chance to explain the facts surrounding the incidents for which respondents summarily revoked his medical privileges.

Lastly, the Court of Appeals placed a great deal of emphasis on what the Court perceived as petitioner's subsequent admission of the very facts which would have been the subject of an additional review. The court cites *Black Coalition v. Portland*

School Dist. No. 1, 484 F.2d 1040 (9th Circ. 1973) as authority for the proposition that such an admission would preclude a subsequent cause of action for deprivation of procedural due process. The *Black Coalition* case deals primarily with a defective procedural review process. There is no such claim in the case at bar. To the contrary, Dr. Ateser simply wants a chance to avail himself to the existing review procedures. The "admission" made by petitioner was that he had admitted patients to the hospital without consultation. However, such an "admission" does not substantiate and support respondent's subsequent decision to suspend since there may have been good and valid reasons for Dr. Ateser's actions. Rather , the very purpose of a hearing should be to explain the facts and circumstances under which this was done. For instance, was it a routine or emergency admission of patients? Did he attempt to consult with another physician but found him unavailable? These are questions which could only be answered at a hearing. The Court of Appeals, therefore, cannot assume that the mere "admission" by the petitioner renders the procedural deprivation moot. There has been a deprivation of the Fourteenth Amendment and the implementing statute, 42 U.S.C. 1983.

For all the foregoing reasons, petitioner respectfully requests this Court to grant the writ for certiorari.

Respectfully submitted,

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APPENDIX I

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COSKUN R. ATESER, et ux., *Plaintiffs-Appellants,* vs. PUBLIC HOSPITAL DISTRICT NUMBER ONE, etc., et al., *Defendants-Appellees.*	No. 77-3568 ORDER

Before: TANG, SCHROEDER and POOLE, *Circuit Judges*

Appellants' petition for rehearing is denied.

[Filed June 6, 1980.]

APPENDIX II

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COSKUN R. ATESER, et ux., *Plaintiffs-Appellants,* vs. PUBLIC HOSPITAL DISTRICT NUMBER ONE, etc, et al., *Defendants-Appellees.*	No. 77-3568 MEMORANDUM

On Appeal from the United States District Court for the Western District of Washington

Before: TANG, SCHOEDER and POOLE*, *Circuit Judges*

Appellants, a physician and his wife, appeal from the summary judgment granted defendants in a civil rights action, brought under 42 U.S.C. § 1983, in which the physician alleged that his hospital staff privileges had been unconstitutionally revoked as a result of the conspiracy on the part of the governing board and staff of Valley General Hospital (the hospital). The hospital is organized as a public hospital district for King County, Washington, whose operations involve state action.

Dr. Ateser's professional performance was the subject of considerable peer concern and criticism.

*Honorable Cecil F. Poole was a United States District Judge for the Northern District of California, sitting by designation, at the time this matter was argued.

A judicial review committee of the hospital found cause to apprehend that his errors in judgment and procedure created unreasonable risks to patients. After almost two years of investigations, reviews and hearings by the institution's committees, the hospital's governing board revoked his obstetrics privileges and conditioned his continued general medicine admitting privileges upon his obtaining consultation from other staff physicians within 24 hours after he admitted any patient to the hospital. The doctor does not challenge the validity of these disciplinary actions which were attended by formalities exceeding the requirements of due process. See *Stretten v. Wadsworth Veterans Hospital*, 537 F.2d 361, 367-69 (9th Cir. 1976)

Despite these restrictions, on two separate occasions Dr. Ateser caused patients to be admitted to the hospital without obtaining the required consultations from fellow physicians. Each incident brought further warnings that such admissions violated the conditions under which his staff admitting privileges were being kept open. When a third such uncounseled admission occurred within a few days, the Executive Committee reacted by invoking emergency provisions of the bylaws and revoking altogether Dr. Ateser's general medicine privileges. The letter notifying the doctor of this action referred him to the bylaw provision authorizing such emergency action. That provision entitles the physician to obtain reviews and hearings pursuant to other bylaw provisions. Dr. Ateser did not seek to invoke these procedures or request a hearing before the Board of Commissioners, but instead filed a state court action. Following action by the Credentials

Committee, the Board took final action revoking all of Dr. Ateser's staff privileges on the basis of his refusal to abide by the Board's previous directive.

When all of the proceedings are viewed in their entirety, it is clear that the hospital officials afforded Dr. Ateser procedural safeguards that were fundamentally fair and even generous under the circumstances. Given the numerous proceedings and elaborate safeguards that preceded the Board's initial action restricting his privileges, the failure to conduct still another hearing or set of committee reviews on the narrow issue of his violation of the restrictions did not amount to a denial of procedural due process. Any *technical* omission in this regard was more than offset by Dr. Ateser's own failure to exercise any remaining procedural rights, and his subsequent admission of the very facts which would have been the subject of any additional formal review. See *Black Coalition v. Portland School District No. 1*, 484 F.2d 1040, 1045 (9th Cir. 1973). The record supports a strong interest by the hospital in protecting its patients and the lack of a substantial risk of an erroneous decision resulting from the agency's actions. See *Mathews v. Eldridge*, 424 U.S. 19, 334-35, 96 S.Ct. 893, 902-03, 47 L.Ed.2d 18 (1976); *Stretten v. Wadsworth Veterans Hospital, supra; Ong v. Tovey*, 552 F.2d 305, 307 (9th Cir. 1977). Dr. Ateser was not otherwise prejudiced by the failure to send him a copy of the Credentials Committee report, as required by the hospital's emergency rule. His due process rights were thus not violated.

Since no constitutional violation occurred, the conspiracy allegations added nothing to the sub-

stantive § 1983 claim. See *Hostrop v. Board of Junior College District No. 515*, 523 F.2d 569, 576 (7th Cir. 1975), *cert. denied*, 425 U.S. 963 (1976). Appellants' contention that disputed issues of material fact concerning these allegations precluded summary judgment is therefore without merit.

AFFIRMED.

[Filed May 1, 1980.§

APPENDIX III

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

COSKUN R. ATESER, and BEVERLY ATESER, his wife, *Plaintiffs,* vs. PUBLIC HOSPITAL DISTRICT No. 1, et al, *Defendants.*	No. C74-74S SUMMARY JUDGMENT OF DISMISSAL

THIS MATTER having come on for oral argument before the undersigned judge of the above-entitled court on August 5, 1975, the defendants, JOHNNY W. TURNER, THOMAS E. MAXWELL, SAN LWAI, DOUGLAS R. CURRIN, PAUL M. TUEFFERS, KENNETH G. KAY and NICHOLAS NELSON having theretofore entered motion for summary judgment of dismissal of the plaintiffs' complaint herein, the parties being present in court or represented by their respective counsel of record, the court having considered the affidavits filed by the several defendants of said motion, the memoranda of authorities filed by the defendants and by plaintiffs in opposition to the said motion, the court having heard and considered argument of counsel and having determined that there is no genuine issue of material fact as to the asserted liability of the moving defendants and the court being fully advised in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED that the defendants' motion for summary judgment of dismis-

sal be and the same is hereby granted, dismissing with prejudice the plaintiffs' complaint as to the defendants, JOHHNY W. TURNER, THOMAS E. MAXWELL, SAN LWAI, DOUGLAS R. CURRIN, PAUL M. TUEFFERS, KENNETH G. KAY and NICHOLAS NELSON.

DATED this 8th day of September, 1975.

/s/ DONALD S. VOORHEES
United States District Court Judge

PRESENTED BY:
/s/ FRANK W. DRAPER
Detels, Draper & Marinkovich
Attorneys for Defendants

APPROVED AS TO FORM AND NOTICE OF PRESENTATION WAIVED:

/s/ HERBERT H. FULLER
Fuller & Fuller,
Attorneys for Plaintiffs

/s/ THOMAS V. HARRIS
Merrick, Hofstedt & Lindsey,
Attorneys for defendant, Nicholas Nelson